U.S. Department of Justice

Immigration and Naturalization Service

59

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-00-191-51085 Office: Vermont Service Center Date: FEB 28 2001

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(i)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a boxing promotions firm. The beneficiary is a professional boxer. The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, seeking P-1 classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the "Act") as an internationally recognized athlete. The petitioner seeks to employ the beneficiary as a professional boxer for a period of approximately six months.

The director denied the petition in a decision dated October 11, 2000. The director determined that the beneficiary was ineligible for the benefit sought finding that the employment contract did not specify the number of scheduled matches. The director also found that the beneficiary did not have the requisite nonimmigrant intent because he had filed an "I-751."

On appeal, counsel for the petitioner identified a series of scheduled and potential matches in which the beneficiary will compete if granted the appropriate employment authorization. Counsel further denied the allegation that the beneficiary had filed an I-751 or any other application or petition for immigrant status in the United States.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
>
> (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

8 C.F.R. 214.2(p)(1)(ii) provides for P-1 classification of an alien:

> (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

8 C.F.R. 214.2(p)(3) states that:

> *Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

8 C.F.R. 214.2(p)(4)(ii)(B) requires that a petition for an internationally recognized athlete or athletic team must include:

> (1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport if such contracts are normally executed in the sport, and...

8 C.F.R. 214.2(p)(3) defines:

> *Contract* means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

The beneficiary is a native and citizen of the Ukraine currently residing in the United States as a B-2 visitor.

The director denied the petition expressing two concerns. The first was whether the petitioner submitted an employment contract sufficient to satisfy the regulatory requirement.

On review, the petitioner has submitted documentation establishing that it is a major promoter in the sport of boxing and has submitted a detailed employment contract with the beneficiary. The fact that specific matches are not scheduled during the beneficiary's intended stay is not considered adverse to the petition. Due to the nature of the sport, matches are scheduled based on the performance of the athlete in preceding matches. Furthermore, counsel has provided information on several tentative matches scheduled for the beneficiary. Therefore, it may be concluded that the petitioner has overcome the director's concern.

The second issue was the finding that the beneficiary had filed an I-751, a Petition to Remove Conditions on Residence.

An I-751 is filed by a lawful permanent resident who was granted such status based on marriage to a United States citizen. A lawful permanent resident is ineligible for P-1 nonimmigrant status which requires maintenance of a foreign residence that he or she does not intend to abandon. The director did not place evidence of the beneficiary having filed an I-751 into the record.

On appeal, counsel denied the allegation that the beneficiary had filed an I-751 and further stated that the beneficiary is married to a citizen of the Ukraine. Counsel further denied that the beneficiary had filed any application or petition for immigrant status in the United States.

While a lawful permanent resident is ineligible for P-1 classification, the record contains no evidence that the beneficiary is a lawful permanent resident. Even if the beneficiary had a pending application for an initial grant of permanent residence, such action is not necessarily fatal to a concurrent application or petition for nonimmigrant status. The Service and the federal courts have generally recognized a doctrine of dual intent, a distinction between an alien's wish to remain in the United States should a lawful opportunity arise, and the intent to do so by any means. Accordingly, the record in this matter contains no evidence that the alien does not have a foreign residence to which he intends to return. Therefore, it may be concluded that the petitioner has overcome the director's concern.

The director did not question the evidence in support of the claim that the beneficiary is an internationally recognized athlete who seeks admission to compete as such an athlete. There are no other known adverse factors pertaining to this petition.

The burden of proof in visa petition proceedings remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.